



Eighth Annual Report
of
Prince Edward Island
Human Rights Commission
1984

The Honourable George R. McMahon, Q. C.
Minister Responsible for Human Rights
Province of Prince Edward Island

Sir:

We are privileged to submit to you, the
Minister Responsible for Human Rights within the
Province of Prince Edward Island, the Eighth Annual
Report of the Prince Edward Island Human Rights
Commission for the calendar year ending December 31,
1984.

Respectfully submitted,

Allan F. MacDonald
Chairperson



CHAIRPERSON'S REMARKS

This eighth annual report is an account of a very full year for the Commissioners and staff.

Our staff has been challenged by sharp increases in the caseload and in the number of inquiries made to the Commission. Also, the Commission has been called upon to handle several new and complex issues, particularly in those areas where it has pioneered human rights involvement: alcoholism, insurance, and sexual discrimination in competitive sports. However the distinctive character of each case and the successful resolution of several major issues made these tasks ever stimulating and gratifying.

Noteworthy among these cases was the resolution of several complaints against regulations and procedures preventing girls from playing play-off hockey on sex-integrated teams. The Commission found these practices discriminatory and ruled that girls under twelve years of age were to be permitted to play competitive hockey on integrated teams on Prince Edward Island. As a consequence of the Commission's decision, the Canadian Hockey Association reviewed its policy relating to integrated hockey and voted to provide "equal opportunity for females to play competitive hockey either on girls teams or on integrated teams at the pre-adolescent level."*

At the present time, a major issue confronts all human rights commissions, this one not excepted. This issue encompasses the widespread criticisms expressed of commission procedures and practices throughout the land. Certainly, any Commission can and should profit by valid and objective criticism and make use of such criticism to improve its service to the public. In all too many cases in recent months, criticisms of commissions have been marked by loose generalizations from individual cases, poor documentation, and an insensitivity to those protected by human rights law and jurisprudence. Human Rights Commissions and all responsible for the advancement of



Chairperson's Remarks - 2

justice must respond to attacks by an even greater emphasis on human rights principles and practices and the education of the public in these. Any undermining of Human Rights Commission's effectiveness by unjust attacks redounds ultimately to the detriment of those most in need of the protection of human rights legislation, the disadvantaged and defenceless among our people.

During the past year Mrs. Sherri Finley retired as Administrative Officer and was succeeded by Jewel MacDonald. To Mrs. Finley and to Jewel MacDonald, and our Executive-Director, Thomas W. Klewin for their committed and professional services the Commissioners express their thanks and appreciation.

* Note: Appendix I - Policy Statement

THE P. E. I. HUMAN RIGHTS ACT

The P. E. I. Human Rights Act was assented to by His Honour the Lieutenant Governor on December 12, 1975, and proclaimed by the Lieutenant Governor in Council in September, 1976. The Act became the paramount law of the Province in September of 1979, three years from the date of its proclamation. The target of the Act is the elimination of discrimination and though the term "human rights" encompasses a wide variety of rights, the Human Rights Commission can only deal with discrimination in certain specific areas and for a limited number of reasons.

The P. E. I. Human Rights Act protects Island residents from discrimination in four areas -- employment and access to services, accommodations and facilities because of race, religion, creed, colour, sex, marital status, ethnic or national origin, physical disability, age and political belief. Age, in the Act, is defined as being between the ages of 18 to 65. The Act also prohibits discrimination in pay and employers must give equal pay for people doing essentially the same work.

The P. E. I. Human Rights Act is not a criminal code nor is the Commission a court of law. The Commission has the responsibility to investigate and attempt to settle any complaint filed under the Act. If the Commission is unable to accomplish this, a report is forwarded to the Minister Responsible for Human Rights and he has the authority to convene a Board of Inquiry to deal with the complaint. The Commission, however, is a party to any complaint coming before a Board of Inquiry.

THE HUMAN RIGHTS COMMISSION

The P. E. I. Human Rights Commission, as mandated by the P. E. I. Human Rights Act, is composed of three Commissioners. These Commissioners are appointed for a three-year term by the Lieutenant-Governor-in-Council.

The terms of the three Commissioners are staggered so that the term of only one Commissioner expires in any given year. This year Ruth MacLeod was reappointed for a second three-year term. During 1984 the Commission was comprised of the following members:

Allan F. MacDonald, Chairperson, reappointed September 18, 1983

Kenneth Birtwistle, reappointed July 1, 1982

Ruth MacLeod, reappointed December 13, 1984

The administrative staff, working under the supervision and direction of the Commission, comprised the following individuals:

Thomas W. Klewin, full-time Executive Director

Jewel MacDonald, full-time Secretary, Research-Intake Officer

The Commissioners

Allan F. MacDonald, Ph.D., Chairperson, Glenfinnan

Father MacDonald is a sociology professor at the University of P. E. I. Prior to his doctoral degree at the Catholic University of America, he studied at St. Dunstan's, St. Augustine's Seminary, and the University of Toronto. As Director of Extension at St. Dunstan's he initiated programs in labour relations, social action, and community development. During the decade 1965-75 he was involved in the formation and direction of the P. E. I. Rural Development Council, later serving as Chairperson. He is the official P. E. I. representative on the Continuing Committee of Federal-Provincial Officials Responsible for Human Rights.

Kenneth Birtwistle, Commissioner, Charlottetown

Kenneth Birtwistle is currently serving as a director of the Canadian Foundation for Polio and as a member of the Naval Benevolent Fund. In addition, he is a member of Rotary, the United Services Officers' Club and the Royal Canadian Legion. He held the position of Executive Director of the P. E. I. United Way for a period of ten years. His position with the United Way brought him into close working cooperation with a wide variety of agencies, including many whose members have a

special involvement with the protection offered them in the P. E. I. Human Rights Act. He served in the Canadian Navy from the onset of World War II until 1962, retiring with the rank of Commander. In addition to sea appointments he served in Ottawa as Deputy Director of Naval Intelligence, and as Deputy Director Naval Organization, as well as on the NATO staff in Norfolk, Virginia. Ruth MacLeod, Commissioner, Montague

Ruth MacLeod is currently the Secretary of the Board of Directors of the Montague Housing Authority and Secretary-Treasurer of the Montague Christian Church. In 1960 she was appointed Secretary of Montague Regional High School Unit and in 1972, when the larger Units of School Administration were formed, she was appointed Superintendent of Business Affairs for Regional Administrative Unit Four and continued in that position until retirement in November, 1979. She has been an active member of the Kings County Hospital Ladies' Auxiliary; is a Past President of the Montague Home and School Association and the Provincial Women's Progressive Conservative Association. She has also been active in various community projects such as Community School and a Community Choir.

THE ROLE OF THE COMMISSION

Unlike most other provincial Commissions, the P. E. I. Commissioners are directly involved in the investigation and settlement of complaints as well as in other aspects of the operation of the Commission which normally are the function of most Human Rights Commission staffs. Since the Commission's staff, resources, and the man-hours available for the staff are limited, the P. E. I. Commissioners must assume a larger function and role in the operational activities of the Commission.

During 1984 the Commission held 18 regular meetings and one special meeting. The Commissioners were also responsible for reviewing all requests for exemptions to the Act based on "bona fide" qualifications. During 1984 the Commission examined four requests and authorized the four; all were sex and employment related.

Policy decisions were also formulated and major issues discussed and reviewed at Commission meetings. During the past year the Commission dealt with the following major issues, policies and procedures:

1. Sex and amateur sports. The Commission's policy statement arose from its investigation of complaints based on sex discrimination in hockey among children under the age of twelve. (The Commission's policy statement can be found in the appendix)
2. Access to Accommodations. The Commission received numerous calls during the year concerning the refusal of landlords to rent to families with children. In response to these queries and those from the media, the Commission issued a number of news releases indicating that this type of discrimination is not covered by the P. E. I. Human Rights Act because "family status" is currently not a prohibited form of discrimination under the P. E. I. Human Rights Act.
3. Pregnancy as Sex Discrimination. The Commission was forced to dismiss a complaint based on pregnancy because Canadian courts have determined this is not discrimination based on sex. To prohibit this type of discrimination will require an amendment to the P. E. I. Human Rights

Act defining discrimination based on pregnancy as sex discrimination.

4. Outreach Program. The Commission researched the source of its calls and from the evaluation of them determined a greater effort must be made to bring the services of the Commission to the residents of Prince and Kings Counties. A program was, consequently, developed to have staff conduct periodic office hours in communities in both counties. The first outreach office hours were held in Montague, Kings County, in November, 1984.

5. Physical Disability and Insurance. The Commission launched an in depth study on the condition of alcoholism as it relates to the issuance of insurance policies. Since this will be a precedent setting policy the Commission will continue its research into 1985 before issuing a policy statement on the matter. In addition, the Commission began discussion with several physically disabled individuals on their inability to purchase income-protection insurance.

6. Medical Examinations and Employment. The Commission assisted in the resolution of a problem relating to medical examinations and the type of medical information to which an employer is entitled, especially when public safety is involved. The Commission determined that only current, relevant and essential medical information could be required by the employer and that each request for specific medical information be channeled through the employee. Since the privacy of one's medical records is a right the release of medical information can only be done with the consent of the individual involved.

7. Proposed Amendments to the P. E. I. Human Rights Act. The Commission proposed two amendments to bring the P. E. I. Human Rights Act into conformity with the Charter of Rights. The amendments proposed deleting the age limitations of 18-65 from the definition of age, leaving no minimum or maximum age for age discrimination, and adding mental disability to the Act as a proscribed ground of discrimination. In addition, the Commission proposed an amendment to exempt the Commission's staff from the Civil Service Act, thereby giving the Commission authority to

appoint, employ and determine the functions and conditions of its employees.

8. Human Rights Act and Legal Age for Drinking. In response to a query from the government and numerous inquiries from the news media and the public concerning the legal age for drinking, the Commission reviewed human rights legislation and presented the legislature with a draft amendment which would exempt legislation relating to the legal age for drinking from P. E. I. 's Human Rights Legislation. The Commission's proposal was, consequently, passed by the Legislature as an amendment to the Act. (This amendment can be found in the Appendix as Section 2)

9. Family Life Education and Human Rights Legislation. The Commission studied and released a statement clarifying the relationship of human rights legislation to family life education. In the news release the Commission noted that while human rights legislation mandates no one be denied equal access to an education on a discriminatory basis, that same legislation has no jurisdiction over the introduction or exclusion of family life education programs from a school curriculum.

10. Systemic Discrimination. The Commission began research on systemic discrimination (a discrimination that is built into a system, institution or organization) as it relates to employment. The particular complaint which prompted this research concerned an individual who believed she was denied an opportunity to practice her profession because of the country of her origin.

PRESENTATIONS TO GOVERNMENT

One function of the Commission, according to the P. E. I. Human Rights Act, is to inform government of concerns brought to the Commission by private organizations and individuals. Consequently, the Commission has endeavored to consult government whenever a pattern of complaints appears in the Commission's log of complaints and inquiries. While the Commission has felt a responsibility to make government aware of the major issues involved in these complaints and inquires, the majority are not within

the jurisdiction of the Commission. During 1984 the Commission made the following presentations:

1. A brief to the Quality of Life Committee of the Legislature.
2. A briefing to both the Premier and the Department of Labour concerning complaints relating to employer-employee relations, working conditions, and termination of employment.
3. Two briefings to the Department of Health and Social Services concerning complaints relating to welfare decisions and child protection services.
4. A briefing to Manpower, Employment and Immigration Canada, concerning a number of issues brought to the Commission by individuals about U.I.C. and the 'Special' Needs category of Manpower.

FORMAL, SIGNED COMPLAINTS

During 1984 the Commission dealt with 42 formal complaints, four of which were filed under a dual discrimination allegation. Fourteen were carried over from 1983; three, including the Charles Craig complaint, had been referred to the Minister in 1980. Two are awaiting the Supreme Court decision on the Charles Craig Board of Inquiry. The Commission dealt with four new areas of discrimination in 1984: Employment and Ethnic/National Origin; Employment and age, the complainant being considered too young; Sex and access to participation in amateur sports; Age and sex and access to rental accommodations. While a number of calls were received concerning equal pay for equal work and sexual harassment, none of the callers were willing to file a formal complaint. The Commission is attempting through a more visible education program to answer the concerns of those reluctant to pursue their rights under the P.E.I. Human Rights Act.

Table I Disposition of formal, signed complaints

	Settled	Referred to Minister	Withdrawn	Carried over	Dismissed	Total
Age	2 ^b		1	4 ^b		7
Race, Colour	1					1
Ethnic/National Origin .				1		1
Marital Status			1	2 ^b		3
Physical Disability	8 ^b			5	1 ^b	14
Political Belief		3*		4		7
Sex	6			4 ^b	4 ^a	14
	<u>17</u>	<u>3</u>	<u>2</u>	<u>20</u>	<u>5</u>	<u>47</u>

* Referred to the Minister in 1980

- These complaints were dismissed when a legal opinion indicated the complaints did not fall under the Act.
- One complaint was filed under age, sex and marital status. One complaint was filed under age and physical disability. Two complaints were filed under age and sex.

Table II Categories of formal, signed complaints

	Employment	Services	Accommodations	Total
Age	3 ¹	3 ³	1 ²	7
Race, Colour		1		1
Ethnic/National Origin .		1		1
Marital Status	1	1	1 ²	3
Physical Disability	9 ¹	5		14
Political Belief	7			7
Sex	4	9 ³	1 ²	14
	<u>24</u>	<u>20</u>	<u>3</u>	<u>47</u>

- One complaint filed under age and physical disability. One complaint filed under age, sex and marital status. Two complaints filed under age and sex.

TYPES OF COMPLAINTS

Employment/Physical Disability (The condition of alcoholism)

A man complained that his employment was terminated because he had entered an addiction services centre for treatment after notifying his company he wished to take his holidays to enter treatment. Since the man sought authorized absence from work for a recognized medical treatment, he was entitled to receive the same benefits and consideration as those given to individuals granted sick leave for any other medical treatment or hospitalization. A settlement was reached between the employer and employee which included a rehiring of the employee, financial restitution and a stipulation that the employee refrain from drinking and enroll in a program such as A.A.

Employment/Physical Disability (Epilepsy)

A man complained that he was refused seasonal employment because of a physical disability (epilepsy) even though he had held the position for a number of years previously. The employer had not rehired the individual because of the possibility he might injure himself sometime in the future through an epileptic seizure. The onus was on the employer to prove that the individual was a safety risk to himself, his co-workers or the public. This would require documented information as to the type of epilepsy the individual had, whether or not it was controllable with medication, as well as the individual's past medical and work record. The Commission concluded the employer had not done this and the Commission's investigation into these facets of the individual's health and work record indicated there was no substantiation for the employer's evaluation of the individual. The terms of settlement provided the individual with the same number of weeks of employment he would have had if he had been hired at the start of the summer work season.

Access to Services/Physical Disability (The condition of alcoholism)

A man complained that he was denied a waiver of premiums on his children's insurance if he were unable to work. The refusal was based on the fact the man was a recovered alcoholic and had not reached the required number of alcohol-free years to

be considered an insurable risk (5 years of total sobriety). The Commission's investigation found an individual assessment of the individual had not been done by the insurance company nor were there any valid studies indicating five years to be the only acceptable criteria for assessing the potential for remaining free of alcohol dependency. The insurance company agreed to provide the man with a waiver of premiums based on his continuing sobriety.

Access to Services, Facilities/Sex

Four young girls filed complaints alleging they were denied the opportunity to participate in playoff hockey by the P.E.I. Amateur Hockey Association. In a precedent setting decision the Commission concluded that girls must be afforded equal opportunity with boys to compete at a level commensurate with their skills and physiological development. This can be done by providing separate organizations of comparable skill level or by sexually integrated teams. Terms of settlement included a change in the rules of the Hockey Association to permit girls to participate on sexually integrated teams. (The Commission's policy statement on Integrated Sports can be found in the Appendix.)

Employment/Age

A woman alleged that she was dismissed from her job because of age. An investigation by the Commission failed to substantiate the complaint. The business was sold to a new proprietor and evidence indicated the woman was unable to adjust to the new standards and criteria of her new employer. While the Commission regrets that any employee is terminated just short of his/her pension age, the Act mandates age must be one of the factors involved in the termination. In this complaint the Commission concluded age was not one of the factors.

Access to Services/Age and Sex

The Commission accepted its second complaint from a single male under the age of 25 in which he alleged he was being discriminated against because he was being charged a

higher insurance premium than a female his age or a single male over the age of 25. The Commission is currently researching these complaints and awaiting a decision by a Board of Inquiry being conducted in another province.

COMPLAINTS REFERRED TO THE CANADIAN HUMAN RIGHTS COMMISSION

The P.E.I. Human Rights Commission referred 21 persons to the Canadian Human Rights Commission in Halifax for information relating to their individual complaints. Preliminary investigation of the complaints revealed that the alleged discriminations fell within federal rather than provincial jurisdiction. The Commission assisted these individuals by establishing initial contact with the Canadian Human Rights Commission's regional office in Halifax, Nova Scotia. The majority of the referrals were related to Canada Manpower, unemployment insurance, equal access to credit from banks, and C. N.

MISCELLANEOUS COMPLAINTS

Twenty-two inquiries were received by the Commission which might have led to the filing of formal complaints. These did not reach the formal complaint stage, however, because the individuals did not choose to pursue the inquiries further, or because a resolution was achieved without the necessity of an investigation of a formal complaint. Frequently an explanation of the Act to both parties was sufficient to effect a settlement to the satisfaction of all concerned.

INFORMAL COMPLAINTS AND INQUIRIES

During 1984 the Human Rights Commission received more than a thousand calls and office visits from individuals concerned about their rights. While few of these inquiries or complaints could be investigated under the Act, the Commission did attempt to assist these individuals in finding the proper government department or agency to further pursue their problems. These types of cases are time-consuming, but the Commission believes providing informational assistance to these individuals lies within the spirit of the Act.

The most frequent inquiries concerned problems related to the Department of Labour; violations of employment rights; rental difficulties especially concerning refusal to rent to families with children, or students; demands for an individual's SIN for a wide variety of reasons; and problems with Canada Manpower, Unemployment Insurance Commission, Workman's Compensation and the Department of Health and Social Services.

MONITORING OF PRE-EMPLOYMENT APPLICATION FORMS

During 1984 the Commission monitored 10 pre-employment application forms as well as assisting 3 companies in preparation of their new forms. In addition, the Commission sent out copies of its pre-employment guidelines for job application forms and personal interviews to various businesses, agencies, and individuals.

A major task still confronting this Commission is the monitoring of pre-employment application forms used in Prince Edward Island by businesses and industries. The Commission has received some assistance in this area by concerned individuals who have been asked to complete employment application forms which are discriminatory and who have notified the Commission of the discriminatory employment application forms.

CONTACTS WITH OTHER HUMAN RIGHTS COMMISSIONS;
GOVERNMENT MINISTERS, DEPARTMENTS AND AGENCIES,
FEDERAL AND PROVINCIAL; PRIVATE FIRMS; INDIVIDUALS
AND NON-GOVERNMENT GROUPS

During 1984 the Commission had numerous contacts with other Human Rights Commissions, government departments and agencies both at the federal and provincial levels. These involved correspondence, phone conversations and personal conferences with the above mentioned groups in relation to queries sent to the Commission or initiated by the Commission as it sought assistance in answering questions or solving problems relating to human rights. Many of the requests were related to the Commission's involvement with new areas of discrimination.

EDUCATIONAL PRESENTATIONS

During 1983 the Commission made 21 educational presentations to a wide variety of organizations and institutions. Because of its manpower constraints, the Commission focused its primary educational outreach to those groups preparing to enter the job market. This was done through seminars conducted at educational institutions at the post-high school level. Special emphasis was placed on reaching women who were re-entering the job market.

CONTACTS WITH MEDIA, NEWS RELEASES

During 1984 the Commission found itself in more frequent contact with the news media. The Commission Chairperson and the Commission staff appeared on television and on radio news casts an increasing number of times. In addition, the Commission was contacted more frequently by news journalists seeking information from the Commission concerning human rights issues. The frequent contacts with the Commission by the news media indicates that the public has become aware of the place of human rights legislation in our modern society.

The Commission continues its policy of periodic news releases and news conferences to keep the public informed of the role and work of the Commission.

PROJECTED GOALS

As the Commission looks to 1985 and its first year with a staff of two full-time employees, there are a number of objectives the Commission envisions as its primary goals for the year.

I. Policy Statements on Insurance

1. A formalization of a policy on insurance as it relates to the condition of alcoholism. It will be, perhaps, the first such policy statement issued by a human rights commission and will continue this Commission's pioneering work in the area of the condition of alcoholism.
2. The development of a policy as it relates to the physically disabled and access to income-protection insurance.
3. The development of a policy relating to auto insurance and age and sex.

II. Outreach Program

1. The establishment of office hours on a periodic basis in Prince and Kings Counties.
2. Development of an education program, including seminars in all three counties of the Province.

III. Educational Materials

1. The creation of an educational brochure outlining the rights and responsibilities of employers.
2. The revision of educational materials currently in use by the Commission to include the new areas of protection provided by the Act and the Commission's growing understanding of the areas protected by the Act.

IV. Review of Provincial Human Rights Legislation

The Commission plans to make an extensive review of the current P.E.I. Human Rights Act in preparation for possible major revisions to the Act.

APPENDIX I - Policy Statement

Statement of the P. E. I. Human Rights Commission Relative to Participation of Sexes in Competitive Sports

We wish at this time to set forth the position of the P. E. I. Human Rights Commission regarding the application of the Human Rights Act to competitive sports in the province. Specifically, we are concerned here with the matter of sexual differentiation in competitive sports, and the application of the Human Rights Act to this differentiation. Because this matter falls within the public domain, the public has a right to know how the Human Rights Act relates to competitive sports at the amateur level.

We are offering these comments to advise the public on the requirements of the Human Rights Act in this regard, and so as to facilitate general compliance with the Act. The subject of sexual discrimination in competitive sports has received no little public attention of late as a result of the disposition by this Commission of complaints of this kind brought to it for adjudication.

We must first point out that our comments pertain only to children at the prepubescent age levels. All complaints were in this age category, and the Commission has restricted its decision to children in the prepubescent age groups where physiological characteristics are such that the sexes can compete with and against each other.

The Prince Edward Island Human Rights Act specifies that:

"No person shall discriminate (a) against any individual or class of individuals with respect to enjoyment of accomodation, services and facilities to which members of the public have access". (Section 2 (a))

Minor hockey playoffs fall within the definition and meaning of "an access to a service and facility" of the Prince Edward Island Human Rights Act. The Human Rights Act specifies those activities and organizations which it intended to exempt from its jurisdiction. Amateur athletics were not so specified and must by interpreted as coming under the legislation.

Since amateur sports on P. E. I. falls under the jurisdiction of the P. E. I. Human Rights Act, rules and regulations of national associations are not involved in a determination of whether or not an act of discrimination has occurred, and; the P. E. I. Human Rights Act takes precedence over all such rules and regulations applied at the provincial level.

Minor hockey playoffs are a "service and facility to which members of the public have access." What the Human Rights Act requires in this situation is that children not be denied an equal opportunity to participate in competitive sports at an appropriate skill level or age level. Specifically, the Act prohibits denial of an opportunity to participate in competitive hockey on the basis of sex.

The Act's requirement of equal opportunity to compete at the same skill level can be fulfilled either: (a) by separate organizations and teams for males and females; or (b) by sexually integrated teams. Neither one is mandated by the Act to the exclusion of the other.

What is mandated is that both males and females must not be excluded from an equal opportunity to participate in competitive sports on a level commensurate with their skills and physiological development.

The purpose of our provincial Human Rights Act is to extend and maximize individual opportunity and benefit in a context of the common good. The shaping of our organizations and institutions in the same spirit will make for the fulfillment of this purpose.

APPENDIX I - Section 2

P. E. I. HUMAN RIGHTS ACT

Part 1

DISCRIMINATION PROHIBITED

Discrimination in accommodation prohibited

2(1) No person shall discriminate

- (a) against any individual of class of individuals with respect to enjoyment of accommodation, services and facilities to which members of the public have access;
or
- (b) with respect to the manner in which accommodations, services and facilities, to which members of the public have access, are provided to any individual or class of individuals.

Amended May 1984 to include -

APPLICATION

- 2(2) Subsection (1) does not prevent the denial or refusal of accommodation, services or facilities to a person on the basis of age if the accommodation, services or facilities are not available to that person by virtue of any enactment in force in the province.